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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,111	12/01/2003	Werner Breymaier	W&B-ES-2056	3339
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LERNER GREENBERG STEMER LLP			DOOLEY, JAMES C	
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3634

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/725,111	Applicant(s) BREYMAIER ET AL.	
	Examiner James C. Dooley	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Non-Final Office Action is mailed in response to Applicant's amendments mailed 11/28/2005, wherein claim 1 was amended and claims 2 – 8 were unchanged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 line 8 the phrase "can be" renders the claim indefinite. The word "can" carries two distinct meanings; "is able" or "is permitted." In claim 1 it is unclear whether the rotary movement (line 9) is being positively or functionally claimed. Claim 5 lines 3-4 the phrase "can be" renders the claim indefinite.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131

USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 7 line 5 recites the broad recitation "for receiving screws", and the claim also recites, "including countersunk head screws" which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by White (US 1,474,660). White discloses a U-shaped suspension element having a cross-piece (16), the support elements form two parallel sidewalls (17), and each support element has an upwardly projecting suspension rail (18). The suspension rails have a given curvature along the lower U-shaped portion, where rail 18 meets support 17; best viewed in figures 2 or 3. White also discloses a hanging element (brackets, lines 34-43). The brackets have a slot formed between vertical elements 19 and horizontal element 23; this slot has a curvature corresponding to the curved section of suspension rail 18 (lines 97-99). The corresponding curvature of the slot is dependent on the radius of wire forming the bracket. The hanging brackets disclosed by White can be positioned on the suspension rail by either a linear or rotary movement as nothing is shown which would inhibit either of these motions.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over White ('660) alone. White discloses support system having a support and hanging element rotatably connectable. White discloses the support element to be metallic (hangers, page 2 lines 59-60, see comments). White also discloses the suspension rail (18) to be bent upwards from the bottom edge of the support element (pg. 1 ln. 78-79). Although White discloses the support element to be metallic he does not specifically disclose sheet metal. White does disclose other portions of the invention to be made from sheet metal (pans, pg. 1 line 19). Because the support element 16 is disclosed to be metallic and also disclosed to support sheet metal items (pg. 1 ln. 100-103) it would have been obvious to one with ordinary skill in the art at the time of the invention to also construct the support element from sheet metal. The motivation to use sheet metal is that sheet metal is a well-known construction material in the art of racks and supports.

With respect to claim 7, it has been previously disclosed that sheet metal would be an obvious choice for construction of the support element (16). Stamping is a common technique in sheet metal forming and it understood to be within the purview of any metallic formed element to be formed by stamping. Therefore the entirety of support 16 is understood to be a stamped portion. White discloses only one cutout

(hole, viewable on the top portion of item 16 in figure 3). It would be obvious to one with ordinary skill in the art that to increase the stability of an object by providing more fasteners. More fasteners would require more fastening apertures. It would also be obvious to one with ordinary skill in the art the holes can easily be punched through sheet metal using the proper equipment. Although White does not disclose multiple cutouts it would have been obvious to one with ordinary skill in the art at the time of the invention to include more than one cutout on the support element of White. The motivation would be to provide a more secure fastening means.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doerr (US 3,321,167) alone.

Doerr discloses a support system for rack elements featuring a support element (B) and a hanging element (D).

The support element (B) features an upwardly projecting rail (A) with a given curvature (col. 2 ln 6-9).

The hanging element (D) has slots (C), which have a curvature corresponding to the suspension rails (col. 2 ln. 9-13). From figure 2 it is evident that the hanging element (D) could only be inserted onto the rail (B) by a rotary movement.

Claim 1 differs from the disclosure of Doerr by stating, "said slot plugging said hanging element onto said suspension rail." Doerr discloses the suspension rail plugging the hanging element (col. ln. 22-23).

The function disclosed by Doerr is the reverse of function disclosed by Applicant i.e., element "B" is hanging and element "D" is supporting. However, the structure of Doerr is capable of performing the function disclosed by Applicant.

Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to modify the design of Doerr to have "B" support "D", rather than "D" support "B". This is a reversal of each element's function. Applicant is referred to *Dollar Electric Company v. Syndevco, Inc. et al.*; wherein it is stated, "*The reverse function is substantially the same as the function itself.*" (205 USPQ 949). The reversal of function in this modification preserves Doerr's original motivation for providing the curved slot and suspension rail. In column 2 lines 36-39 Doerr states, "By the new type of hooking in and anchoring of the shelf boards it is achieved that an unintentional pressure from below does not lead to loosening the attachment." Which is the same motivation Applicant has given for the curved connection in the disclosure on page 8 lines 8-10.

With respect to claims 2 and 3, Figure 1 shows that the curved suspension rail (A) is configured radially and covers approximately one quarter of a circle. Doerr does not disclose how much of sector the curved portion covers. Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to have the suspension rail cover a 30° sector of a circle. The motivation would be that a sector greater than 30° could be inferred from Figure 1 disclosed by Doerr.

With respect to claim 4, Doerr discloses that all elements could be made from metal (col. 3 ln. 21-23), but does not specifically disclose sheet metal or bending

fabrication. Sheet metal is a commonly used material and bending is a common method of sheet metal forming. Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to produce the suspension rail disclosed by Doerr from sheet metal. The motivation to use sheet metal would be its strength and formability.

With respect to claim 5, Doerr discloses the hanging element (D) to have an oblique abutment surface (G) for the purpose of facilitating engagement of the elements (col. 3 ln. 3). It could be either intentional or unintentional that the abutment surface (G) would be placed against the suspension rail (A) before plugging.

With respect to claim 6, Doerr discloses the hanging element (D) to have a U-shaped cross section (col. 2 ln. 16-19). Figure 5 demonstrates the U-shape hanging element having slots (C) formed on the sidewalls. Regarding the cutouts on the crosspieces, Figure 5 shows two columns of circles on the crosspieces, which are disclosed to be "eyes" in column 1 line 65-66. The term "eye" as understood in the art, is a variation of the term "eyelet, which is defined to be a small hole (Webster's II dictionary). Note, the hanging element (D) is referred to as "a notchboard" in the disclosure of Doerr (col. 2 ln 13).

Comments

Due to typographical errors in the disclosure of White ('660) it may be confusing to discern between what White calls hangers and stirrups. White discloses the hangers to rest on the joists. From figure 2, it is shown that only one object, element 16, rests on the joist. White discloses the object resting on the joist to be the stirrup (16, pg. 1 ln. 75-76), which functions as a support element for the bracket. Note that in the disclosure of White, page 1 line 76, the joist is improperly labeled as item 14. Figure 2 clearly shows that the joist is item 15. Item 14 is disclosed to be plates in on page 1 line 68, as is also clear in figure 1.

Response to Arguments

The indicated allowability of claims 3,7,8 is withdrawn in view of the newly discovered reference, Doerr (US 3,321,167).

Applicant's arguments, see page 8 lines 1 - 9, filed 11/28/2005, with respect to the rejection(s) of claim(s) 1 under 35 U.S.C. 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Doerr. The new rejection demonstrates the curved fitting between the elements.

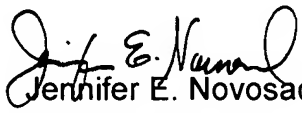
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US patent Micheal (2,549,110) demonstrates many of the features claimed in Applicants disclosure. Micheal discloses a support element (11) having an upwardly curving suspension rail (12, col. 3 ln. 12), a hanging element (5), having a slot matching the curvature of the rail (inferred from figure 2), and an oblique abutment surface (13).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C. Dooley whose telephone number is 571-2721679. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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Art Unit 3634

01/10/2006